

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHNNY CHIBUEZE IROAKAZI,
Plaintiff,

v.

KILOLO KIJAKAZI,¹
Acting Commissioner of Social Security,
Defendant.
-----X

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

18 CV 8193 (VB)

Before the Court is Magistrate Judge Andrew E. Krause's Report and Recommendation ("R&R"), dated February 4, 2022 (Doc. #23), on the parties' cross-motions for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). (Docs. ##14, 18). Judge Krause recommended that plaintiff's motion be granted and defendant's motion be denied, essentially because the Administrative Law Judge committed legal error by (i) failing to properly apply the so-called "treating physician rule" to the opinions of plaintiff's treating physician (Dr. Joseph Squitieri), and (ii) improperly assigning significant weight to the opinion of an expert witness (Dr. Edward N. Halperin). The magistrate judge further recommended that judgment be entered in favor of plaintiff, and that the case be remanded to the Social Security Administration for further administrative proceedings consistent with the R&R.

For the following reasons, the Court adopts the R&R. Plaintiff's motion is GRANTED, and defendant's motion is DENIED. This case is REMANDED for further administrative proceedings consistent with the R&R, pursuant to 42 U.S.C. § 405(g), sentence four.

Familiarity with the factual and procedural background of this case is presumed.

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge's report and recommendation, but they must be "specific[,] written," and submitted within fourteen days after being served with a copy of the recommended disposition, Fed. R. Civ. P. 72(b)(2); see also 28 U.S.C. § 636(b)(1), or within seventeen days if the parties are served by mail, see Fed. R. Civ. P. 6(d).

Insofar as a report and recommendation addresses a dispositive motion, a district court must conduct a de novo review of those portions of the report or specified proposed findings or

¹ Pursuant to Fed. R. Civ. P. 25(d), Kilolo Kijakazi is substituted as the defendant in this case.

recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Neither party objected to Judge Krause's thorough and well-reasoned R&R.

The Court has reviewed the R&R and the underlying record and finds no error, clear or otherwise.

CONCLUSION

The R&R is adopted as the opinion of the Court.

Plaintiff's motion for judgment on the pleadings is GRANTED. (Doc. #14).

Defendant's motion for judgment on the pleadings is DENIED. (Doc. #18).

The case is REMANDED to the Social Security Administration for further administrative proceedings consistent with the R&R, pursuant to 42 U.S.C. § 405(g), sentence four.

The Clerk is instructed to enter Judgment accordingly and close this case.

Dated: February 24, 2022
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge